IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1525

ALUMINUM COMPANY OF AMERICA, ET AL,
Petitioners

v.

WOODS EXPLORATION & PRODUCING COMPANY, INC., ET AL, *Respondents*

SUPPLEMENTAL BRIEF OF RESPONDENTS, ANSWERING PETITIONERS' REPLY BRIEF OF JULY 16, 1975

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PRELIMINARY STATEMENT

The slip opinion of the Court of Appeals, March 13, 1975, sought to be reviewed, is now reported as *Woods Exploration & Producing Company, Inc., v. Aluminum Company of America*, 509 F.2d 784 (1975).

The Reply Brief of Alcoa et al's, filed on or about July 16, 1975, contains so many misstatements and distorted statements that Respondents cannot begin to deny them all in the space alloted. The true facts are contained in Justice Clark's trial opinion and Circuit Court of Appeals opinions.

REPLY TO ARGUMENT

I.

Alcoa et al were responsible for the two trials and for the reading of the verdict to the second jury. The court, however, carefully protected Alcoa et al from any prejudice in instructions, and gave Alcoa et al a fair trial.

Woods et al contend that Alcoa et al did have a fair trial. Justice Tom Clark, in his opinion, stated:

> "Moreover, it is this court's judgment, independent of the law of the case as established by the Court of Appeals, that Defendants have not been denied a fair trial" (Page 102 of Petitioner's Appendix).

This answers and controls all of the little out-of-context references by Petitioners to the pre-trial record and record not before this Court.

It was Petitioners who requested the Court that, rather than submit only part of the first jury's verdict, it would be more logical to submit to the second jury the entire verdict. It was obvious that (1) because of the amount of evidence the trial judge allowed regarding Petitioners' claim of drainage of gas beneath Alcoa's and Crown's leases, and (2) because the last jury, through the submission of the prior jury's award of substantial damages

(See First Verdict attached to Petitioners' Original Petition for Certiorari, p. 5b) to Respondents, the prior jury's damage findings could cut both ways and that the jury in the instant case "could view it that the Plaintiff had already gotten enough and Defendants had been punished enough by this amount of money, so we won't give them any more." Petitioners' counsel concede this possibility (Court of Appeals Record 73-1633, pp. 488-489, Record 395).

II.

There is no substance or harm in the claimed error in the two separate judgments. They were combined for argument on the appeal. It was Alcoa that invited the Fifth Circuit in its first judgment to allow them the right to a partial final judgment to protect them from a suit in the state court. This was done. The trial and appeal would have been handled no differently if the trial court had let the verdict stand in the first trial, without a partial judgment thereon, and submitted the issues on the extraction plant in the second trial.

III.

The court properly refused to resubmit the issue of liability to the jury and limited the trial to the issue of damages due to interference with liquid extraction plant. The general manager of Alcoa admitted that the restriction on production and transportation directly affected the extraction of the by-products. Also see Circuit Court of Appeals in the Second Opinion, pp. 119, 120 and 121 of Petitioner's Appendix.

IV.

The trial court permitted evidence of the production in both trials.

Tanner, Crown's landman, said that Alcoa et al's agent Appling, owned everything around the townsite except the Carancahua Bay (Court of Appeals Record 73-1633, at page 883, Record 1224). This way, they were able to control the pipelines and stripping plants connected therewith in the Appling Field and barricade access to markets or make the same prohibitively expensive (Petitioners' Appendix, pages 114, 115 and 116).

Alcoa's executives admitted that the small-tract operators, including Woods et al, would not recover over thirty per cent of the reserves in the upper sands (Court of Appeals Record 73-1633, page 1768, Record 3339 and 3340), thus leaving Alcoa with 70 per cent of the production from the upper sands and 100 per cent of the unproduced reserves below the Mid-Kopnicky.

V.

The Instruction No. 32 was properly given and caused no harm to Alcoa et al.

Justice Clark in his opinion correctly summarized the evidence as follows:

> "(e) Defendants' objection as to Instruction No. 32 is not persuasive. There was testimony that Alcoa caused a shutdown of Woods' wells on a spurious complaint; and that each time the plaintiffs received a favorable ruling from the Commission or the granting of a permit, defendants filed a law suit to delay and prevent its implementation. Indeed there was testimony indicating that defendants gave standing instructions to file suits as soon as plaintiffs received favorable orders. The Instruction merely said that if these actions were part of defendants' monopolization activities, then they were illegal. That is the law." (Page 105 of Petitioners' Appendix).

To illustrate evidence in support of the trial judge's finding, the attorney for Alcoa et al threatened Woods that when they got through using the legal procedures that they knew were baseless, "you are going to be broke down there." The attorney said, "We'll end up breaking you." After Alcoa et al's attorney told Woods there was no basis for attack under the Railroad Commission rules, they still attacked the same (Court of Appeals Record 73-1633 pages 790 to 792, Record 1067 to 1070, and pages 1006 to 1011, Record 1435 to 1443). Joe Williams, another independent producer, said: "Every time I got a permit, I got a notice of a lawsuit. I got thirty-seven permits and thirty-seven lawsuits." (Court of Appeals Record 73-1633, page 982, Record 1393).

CONCLUSION

The question raised as to liability are all without merit. The amount of damages in the second trial was reduced by the jury by about fifty per cent due to an instruction on income taxes. The delay to date has benefited Alcoa because of (a) inflation and (b) inadequate rate of interest since the trial of only six per cent.

Numerous courts have tried to satisfy the Petitioners and to give them every opportunity to prove their innocence, which they have failed to do. Justice has been

done, and this Writ should be refused so that the Respondents during this lifetime may receive the money the jury and the courts have awarded them after thirteen (13) years of due process to Alcoa et al.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served on the 8th day of September, 1975, on attorneys for Petitioners, pursuant to Rule 33 (1) of this Court, by placing three (3) copies of the foregoing Brief in the U.S. Mail, first class, postage paid, addressed to counsel of record for Petitioners, at their post office address of record, thus serving all parties required to be served.

LEVERT J. ABLE